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CASE NO.

SUPREME COURT OF THE
UNITED STATES

OCTOBER TERM, 1984

MARY E. PATCHETT,
Petitioner

v.

RICHARD L. PATCHETT, JR.,
Respondent

On Writ of Certiorari from the Supreme Judicial Court for the Commonwealth of Massachusetts and the Appeals Court for the Commonwealth of Massachusetts.

PETITION FOR WRIT OF CERTIORARI

ILENE B. BELINSKY
ROBERT H. GREENE
231 Main Street
Brockton, Massachusetts
(617) 588-7729,
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A. QUESTION PRESENTED FOR REVIEW

Whether a state family court, upon a complaint for divorce, violated a wife's First and Fourteenth Amendment rights under the United States Constitution regarding religious rights where, in awarding custody of minor children to the husband, although the Findings and Conclusions of the family court reflected that it primarily relied upon its criticism of the wife's religious practices in awarding custody to the husband, there was no evidence that the wife's involvement in the "Born Again Christian" movement had any articulable, demonstrable adverse effect on the children.

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CONSTITUTIONAL PROCEEDINGS

U.S. Const. Amend. 1 7

U.S. Const. Amend. XIV Section 1 7

D. REPORTS OF OPINIONS

The opinion of the Appeals Court for the Commonwealth (App. i) was not reported, but the order affirming the Judgment of the trial court was reported at 19 Mass. App. Ct. 1109, 475 N.E. 2d 439 (1985). The order of the Supreme Judicial Court of the Commonwealth denying further appellate review (App. xv) was entered upon April 1, 1985 and reported at 394 Mass. 1103, 477 N.E. 2d.595 (1985).

E. JURISDICTION

(i) The Judgment and Order of the intermediate appellate court of the state, the Appeals Court for the Commonwealth, was dated and entered upon February 14, 1985, (App. xiv) and the Order of the Appellate Court of last resort, the Supreme Judicial Court for

the Commonwealth, was dated and entered upon April 1, 1985, (App. xv).

(ii) The wife believes that the First and Fourteenth Amendments of the United States Constitution confer upon this Court jurisdiction to review the Orders in question by writ of certiorari.

F. CONSTITUTIONAL PROVISIONS

U.S. CONST. Amend. I:

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Goverment for a redress of grievances,

U.S. CONST. Amend. XIV section 1:

All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the

United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

G. STATEMENT OF THE CASE AND FEDERAL QUESTIONS RAISED

Richard and Mary Patchett were married in Canton, Massachusetts upon June 30, 1973. Four children, all daughters, were born to the parents in 1975, 1976, 1978 and 1980. During the marriage, the wife was the primary caretaker of the children, arranging for their medical attention, preparing them for school, arranging for religious

instruction and feeding, dressing and otherwise caring for the children. By all accounts, including the husband's, the mother provided excellent care to the children.

The husband attributed the marital breakdown, which began in 1976 and worsened until the final separation in February of 1983, to the "wife's over-involvement with religion as a Born Again Christian...," and issues involving the wife's discipline of the children, her unwillingness to work and sexual problems (App. xix). The wife, having become involved in the religious movement or experience, changed her lifestyle so that she no longer wished to go drinking or to parties with her husband, or to socialize with him in general. As the children became older, Mrs. Patchett

attempted to teach them Bible verses and lessons, and frequently played religious tapes and songs to the children. The husband was particularly critical of her religious instruction to their daughters. The wife was constantly playing religious tapes and songs in the home, or reading or teaching verses from the Bible to the children (App.xxii). The wife also instructed the children to pray for their father, that he would be saved, and on many occasions when the father would arrive home, the children would inquire "Are you saved, Daddy?" (App.xxiii). The mother's religious activities became so irritating to the husband that, as he testified, he told her, "Mary, why don't you throw the book (Bible) away...."

Although the husband was very distressed by the playing of the

religious tapes, the Bible reading and church attendence, and the wife's preaching to him, he testified that he did not observe any other changes in his children other than their association with Born Again Christians, but he feared that the children would be "... brain-washed into their mother's beliefs." Other than one incident wherein the mother, late to church with three of her daughters, had to physically force one of the children into an awaiting car, and a secondhand report involving one incident with the same daughter, there was no evidence that any of the wife's religious pratices, preaching or training of the children had any specific demonstrable adverse effect upon the children.

In fact, an investigator appointed by the family court to examine the

family, reported to the Court that the incident involving the daughter was a "one-time incident," and both parents were capable of caring for the children, the mother having adequate judgment to care for her children with no indications that she was impulsive. Testimony from other witnesses indicated that while in the wife's care, the children were always very clean and well-groomed, and the husband also had no criticisms of the wife's care of the children other than those involving religious issues.

The family court issued its award of custody (App. xxviii) to the father relying primarily upon findings and conclusions addressed to the mother's lifestyle as influence by her religious beliefs and practices (App. xxviii), and the Court's comment regarding the incident described above.

The issue of the potential abridgement of the wife's Constitutional religious rights was raised at several points during the trial. The wife's attorney confronted the Court with this issue during his Argument (App.xxxi), and he presented Requests for Rulings of Law which directly presented the issues of religious rights to the trial court (App.xxxiv). At trial, the judge of the family court denied that there were issues of religious rights involved in the case (App.xxxiii). He did not directly rule upon the wife's Requests for Rulings of Law, although his decision (App.xviii) reflects, sub silencio, a rejection of the wife's contention that absent clear showing that her religious beliefs and practices have an articulable and demonstrable adverse effect upon the children, they are not the subject

of judicial discretion in a custody dispute.

The wife again raised the issue of the abridgement by the family court of her First Amendment religious rights in her brief to the Appeals Court, and again in her application for Further Appellate Review to the Supreme Judicial Court, all of which were denied by the respective courts.

H. REASONS RELIED UPON FOR ALLOWANCE OF THE WRIT OF CERTIORARI

Although the Supreme Court of the United Stated rarely addresses issues arising from custody disputes in state court actions, it has found such occasion where one parent has suffered a deprivation of a significant constitutional right. See Palmore v. Sidoti, ___ U.S. ___, 80 L.Ed.2d 421, 104 S.Ct. 1879

(1984) (family court considering parent's interracial remarriage in a change of custody proceeding violates equal protection clause of the Fourteenth Amendment). While the statutes of a state may confer broad discretion upon the family court in deciding a custody dispute, this discretion is not unlimited and other countervailing interests may exist. Mrs. Patchett sought rulings of law from the family court, and later the appellate courts of the Commonwealth of Massachusetts that unless her religious beliefs and practices could be shown to have an articulable and demonstrable adverse effect upon children, that they should not be the subject of judicial discretion nor a factor in the award of custody. The family court chose to criticize the mother's religious zeal and conclude that her

adherence to the Bible had somehow so "adversely affected" her judgment "to the point of confusion" and she had become "unreasonable and unbending insofar as her own family's well-being is concerned," without a single example of where the mother had become confused or unreasonable except, perhaps the single incident when she tried to force one daughter to a car in order to arrive at church on time (App. xxi). The predominance of the religious factor in the decision is even more obvious where the family court totally disregarded the reports of its own investigators, as well as other evidence including from the father himself, indicating that other than what the father regarded - and the Court deemed - as the mother's "overinvolvement" with religion, the mother was a fit and proper person to have custody

(App. xx).

The Appeals Court of the Commonwealth failed to grasp the potential complications posed by a court's criticism of one parent's "overinvolvement with religion..." and instead cited consideration involving accommodation of conflicting religious views, relying upon a Massachusetts decision which addressed a modification action brought after an initial award of custody. Felton v. Felton, 383 Mass. 226 (1981).

Although the wife brought to the attention of the Appeals Court the potential cooling effect on her First Amendment rights involved in judicial criticism of her religious zeal, the Appeals Court opined that "He (the trial judge) was bound to consider whether Mary's lack of moderation in impressing her religious views and practices upon the children was

harmful to them." (App. x). While the trial judge, given the husband's allegations of "brainwashing" may have justified in reviewing evidence pertaining to the issue, his findings indicated that the religious element was a crucial if not predominant factor in his decision.

Other jurisdictions have established a standard that where an original action of custody is before a family court, it should not consider the religious training of children unless the evidence shows substantial, articulable and demonstrable adverse effect upon the children. Bonjour v. Bonjour, 592 P.2d 1233, 1239 (Alaska 1979); Osier v. Osier, 410 A.2d 1027, 1030-31 (Maine 1980); Waites v. Waites, 567 S.W.2d 326, 333 (Mo. 1978); See McLaughlin v. McLaughlin, 20 Conn. Supp. 274, 132 A.2d 420, 422 (1957) (Writ

of habeas corpus denied where noncustodial father objects to mother's religion). This standard permits the family court to exercise its discretion in child custody bases without the danger that a parent's First Amendment rights will be infringed. The courts of Massachusetts, however, would continue to permit such evidence to be part of the discretion of the judge and consequently a factor in a custody action.

The Supreme Court has determined that state action which has the effect of pressuring or influencing an individual to forego a religious practice constitutes a substantial infringement upon the individual's First Amendment rights. Sherbert v. Verner, 374 U.S. 398, 403-4, 102. Ed.2d 965, 83 S. Ct. 1790 (1963). The Court has prescribed that the next consideration would be whether there exists

some compelling state interest which justifies the substantial infringement of the individual's fundamental rights of religious liberty. Id., 374 U.S. at 406, 10 E.Ed. 2d at 392, and determined that only the gravest abuses which endanger paramount interests justify a limitation of religious liberty. Wisconsin v. Yoder, 406 U.S. 205, 215, 92 S. Ct. 1526, 32 L.Ed. 2d 15 (1972).

With regard to the "establishment" clause of the First Amendment, the Supreme Court has determined that a state goverment cannot take legal actions which assist one or all religions, prefer one religion over another, force or influence a person to attend or refrain from church attendance against his will, or punish a person for religious belief or disbelief of for church attendance or non-attendance. Larson v. Valente, 456

Y.S. 228, 246, 102 S.Ct. 1673, 72 L.Ed. 2d 33, 48-9 (1983); Everson v. Board of Education, supra, 330 U.S. 1 at 15-16. Generally, so far as govermental interference with the "free exercise" and "establishment" of religion are concerned, the separation of church and state must be complete and unequivocal, Zorach v. Clauson, 343 U.S. 306, 312, 72 S.Ct. 679, 96 L.Ed. 954, 961 (1952), with strict neutrality of goverment in all matters of religious theory, doctrine and practice. Epperson v. Arkansas, 393 U.S. 97, 103-7, 89 S.Ct. 266, 21 L.Ed. 2d 228 (1968).

The Patchett decision, if not reversed by this Court, would stand for the precedent that a parent exhibiting religious zeal, even if otherwise a caring and adequate parent, may be prejudiced in a custody dispute without a showing that

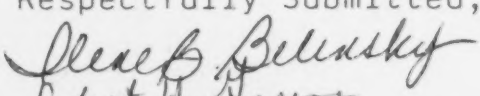
the children are adversely affected by the religious zeal. Other states, as cited above, have clearly established principles to protect the religiously zealous parent while also safeguarding the welfare and best interests of the children. Other jurisdictions, including the Commonwealth of Massachusetts, have failed to establish this principle with the result that a parent's religious practices are factors still within the scope of judicial discretion in a custody dispute so that decisions may still weave the innocuous religious activities of a capable parent with other factors involved in the dispute. Consequently, a capable parent, in violation of his or her First Amendment constitutional rights, may be compelled to modify, shape or even abandon religious practices in anticipation of their perjorative

influence in a custody dispute.

G. CONCLUSION

For all of the reasons stated above, this court should grant the Petition for Writ of Certiorari.

Respectfully Submitted,



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